

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4845 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BANYAN & BERRY

Versus

DEPUTY COMMISSIONER OF INCOME TAX (ASSTT)

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Appearance:

MR JP SHAH for Petitioners

Mr.P.K.Jani with Mr.M.R.Bhatt for Respondents

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CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision: 06/09/96

ORAL JUDGEMENT(Per:Pandya.J)

This is an offshoot of a decision given in Income-Tax Reference No. 175/93 on 21.12.95 and that decision is reported in 131 CTR (Gujarat) 127.

2. After the reference was answered on the aforesaid date by this Court under section 260(1) of the Income-tax Act 1961, the Tribunal was required to pass such orders as are necessary to dispose of the case to conform to such judgment. The questions are mentioned on pages nos 8 and 9 of the compilation and with a view to appreciate the controversy between the petitioner and the respondents, copy of the judgment was required to be produced before us, which has been produced by the petitioner today.

3. We were carried through the judgment at page 80 onwards both by Mr. Jani and Mr. Shah. Finally we could find out that these observations are merely relating to question no.2 which has been answered in favour of the department. But in appeal the questions having been answered in favour of the department and the answer given by the High Court in Reference being in favour of the assessee and against the department-the revenue, in accordance with said provisions of section 260(1) all that the Tribunal had to do was to , bring its order in conformity with the said answer.

4. This would mean that questions which were answered in favour of the assessee in its appellate judgment were to be brought in line with the answer given by the High Court.

5. While doing what the Tribunal did was to make the following observation:

"However, before part with this order, it may be pointed out that Hon'ble High Court has left the file open for Revenue to tax the amount received by the partners as per observation appearing from p.80 onwards of the decision of the said order"

6. In our opinion, this cannot be said to be observations, necessary for bringing the order of the Tribunal in conformity with the judgment of the High Court in the said Reference.

7. When the answer given by the High Court is in favour of the assessee against the revenue, all that it had to do was to change its order from negative to positive with reference to the assessee. Aforesaid observation are not necessary for carrying out its statutory mandate u/s 260(1) of the said Act so far as

the Tribunal is concerned.

8. Mr. Jani for the respondent has strongly urged that as they are incidental observations and the Tribunal has got power to pass consequential orders.

9. These observations being in consequence of the finding of the court in respect of those two questions referred to this court as one could have understood. However, that being not the position or as could see from the judgment, these observations cannot be said to be consequential observations.

10. Necessary consequence will follow from the order which is finally passed if as a result of a reference, the High Court while making some changes and negating the finding to positive finding, the section will have to be altered but that is not the position to be found in this case and accordingly the observations made by the Tribunal quoted above, are not in the nature of consequence.

11. In our opinion therefore, the petition must succeed and we allow the same. The observations quoted above are quashed and they are ordered to be removed from the order of the Tribunal Bench B under section 260 (1) in ITA No.5230/AHD/91 in its order dated 8.4.96. Rule is made absolute. Copy of this order be forwarded to respondent no.2 Tribunal.

(N.J.Pandya.J)

(S.D.Pandit.J)